HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(S) No.5144/2007

Petitioner S.J.Shrivastav, s/o Late Shri H.N. Lal Shrivastav, aged about 54 years, Presently working as Forest Range Officer, Kelhari, Forest Division, Manendragarh, District Korea(CG)

Versus

Respondents

1. State of Chhattisgarh, through the Secretary, Forest Department, DKS Bhawan, Raipur(CG)
2. The Under Secretary, State of Chhattisgarh, Forest Department, DKS Bhawan, Raipur(CG)
3. Shri N.Ekka, Forest Ranger, O/o the Principal Chief Conservator of Forest of Forest, Raipur(CG)

W.P. UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

Appearance:

Shri P.Diwakar, Sr. Advocate with Shri P.R.Patankar, counsel for the petitioner.

Shri Ajay Dwivedi, Panel Lawyer for the State on advance copy.

ORAL ORDER
(10.09.2007)

Sunil Kumar Sinha, J.

Heard.

The petitioner, who is posted as a Forest Ranger in Kelhari Forest Division, Manendragarh(CG), has been transferred vide order dated 16.8.2007(Annexure P-1) from Kelhari, Manendragarh to the office of Principal Chief Conservator of Forest, Raipur Division, District Raipur(CG) and respondent No.3 has been brought to his place from Raipur to Kelhari, Manendragarh.

Learned Senior counsel appearing on behalf of the petitioner raises 3 points. His first submission is that the order of transfer has been passed without any proposal by the department. His second submission is that there is violation of transfer policy because nearly 22 – 27 % persons have been transferred in the current session, whereas, the policy says that the percentage of total transfer would not exceed 15 %. His third submission is that the transfer has been affected in the ban period, which is against

(37)

the policy. He refers to page 17 of the paper book, which is the transfer policy of the Government dated 13th June, 2007.

The transfer is an incidence of service, no person working on a transferable post can make his claim for posting at a particular place. It is for the employer to see as to who should be posted at which place, keeping in mind the better functioning of the department as also the public interest.

So far as the proposal of the department and percentage of the total transferred employees and passing the order in ban period are concerned, these only relate to the policy, for which, the individual cannot claim a relief as a matter of right on account of deviation from the policy by the government because, the government is always at liberty to make such deviations in the public interest.

In the matter of ***Union of India vs. S.L.Abbas, AIR 1993 SC 2444***, it has been held by the Apex Court that the guidelines issued by the Government about the transfer of Government employee do not confer upon the Government employee a legally enforceable right. It has been held vide para 7 of the aforesaid judgment that who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. However, it has been further held that while ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject.

Further in the matter of ***State of U.P. and others vs. Gobardhan Lal, 2004 AIR SCW 2082***, it has been observed by the Apex Court that even administrative guidelines for regulating transfers or containing transfer policies at best my afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. The Apex Court has further observed that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not

(38)

confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by malafides or is made in violation of any statutory provision.

Unless the order of transfer is shown to be vitiated by malafides or extraneous considerations or it is shown to be passed against any statutory Rule or the Act, it cannot be interfered by a court of law, is the settled view of the Apex Court.

In view of the settled legal position, I do not find any force in the arguments advanced by learned Senior counsel for the petitioner.

The petition is not worth admission. The same is dismissed at the motion stage itself.

Sd/-
Sunil Kumar Sinha
Judge

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